

Ⓐ Southwestern Bell Telephone

ACCT NUMBER 316 95B 5255 226 5  
AUGUST 17, 1995  
DETAIL OF CHARGES

PAGE 3

SUMMARY OF CHARGES FOR SOUTHWESTERN BELL  
SPECIAL BILLING CHARGES (SEE DETAIL)

33079.44

CHARGES BEFORE TAXES	33079.44
FEDERAL TAX	.00
STATE AND LOCAL TAXES	.00
<b>TOTAL</b>	<b>33079.44</b>

SOUTHWESTERN BELL BILLING INQUIRIES DIAL TOLL FREE 1-574-1725 FREE/TO ORDER 1-574-1725 FREE

## DETAIL OF SPECIAL BILLING CHARGES

<u>ITEM</u>	<u>EXPLANATION</u>	<u>AMOUNT</u>
HUTCHINSON	002960/	
SOUTH HUTCHINSON	000234/	
WINFIELD	000448/	
ARKANSAS CITY	000107/	
HERINGTON	000273/	

- See Reverse

"Thank You For Using Southwestern Bell Telephone"

Ⓐ Southwestern Bell Telephone

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PAGE 4

<u>ITEM</u>	<u>EXPLANATION</u>	<u>AMOUNT</u>
EASTBOROUGH	000032/	
KECHI	000041/	
BUTLER COUNTY	000120	
EL DORADO	001104	
SEDGWICK COUNTY	000724/	
WICHITA	018740/	
ANDOVER	000140	
AUGUSTA	000393	
CRESTVIEW CC	000002/	
CHENEY	000023	
OAKLAWN	000162/	
DERBY	000223	
GODDARD	000027	
LA CROSSE	000160/	
HAYSVILLE	000496	
MAIZE	000094/	
ROSE HILL	000003	
VALLEY CENTER	000228/	

- See Reverse

"Thank You For Using Southwestern Bell Telephone"

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PAGE 5

ITEM	EXPLANATION	AMOUNT
GREAT BEND	001174/	
HALSTEAD	000210/	
HARPER	000123	
LARNED	000389/	
NEWTON	000819/	
LYONS	000457/	
MC PHERSON	000359/	
NICKERSON	000050/	
MEDICINE LODGE	000237/	
PEABODY	000076/	
BEL AIRE	000282/	
TOWANDA	000033	
MULVANE	000251/	
PARK CITY	000599/	
SEDGWICK	000049/	
	031862 POLE CONTACTS AS OF 6/30/95 AT \$0.825	26286.15
	ADVANCED BILLING FOR PERIOD 7/1/95 THRU 12/31/95	
	FOR CONDUIT FOOT RENTAL FOR VIDEO USE.	

See Reverse

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PAGE 6

ITEM	EXPLANATION	AMOUNT
WICHITA	033138	
	033138 CONDUIT FEET AS OF 6/30/95 AT \$0.205	
	SPECIAL NOTE: NO TAXES CHARGED AT THIS TIME.	6793.29
SPECIAL BILLING CHARGES		33079.44

18,580 @ .21 = 3889.20

30,175.35

See Reverse

"Thank You For Using Southwestern Bell Telephone"

## **EXHIBIT 4**

**ADJUSTMENTS TO SWB 1995 & 1996 CONDUIT BILLINGS**

<b>Billing Period</b>	<b>Corrected Semi-Ann. Rate (Ex. 1)</b>	<b>Billable Duct Occ. (Ex. 2)</b>	<b>Total</b>
1/1/95 thru 6/30/95	\$ 0.20	10,847	\$ 2,169.40
7/1/95 thru 12/31/95	\$ 0.20	11,026	\$ 2,205.20
1/1/96 thru 6/30/96	\$ 0.19	11,026	\$ 2,094.94
7/1/96 thru 12/31/96	\$ 0.19	11,026	\$ 2,094.94

**Total Max. Due '95-'96** **\$ 8,564.48**

## **EXHIBIT 5**

REFUNDS DUE MULTIMEDIA	
Total Occupancy Billings '95-'96 (Ex. 3)	\$ 27,288.58
- Total Max. Due '95-'96 (Ex. 4)	\$ 8,564.48
= 1995 - 1996 Occupancy Refund Due	\$ 18,724.10
Backbilling Surcharge Paid to SWBT 8/2/96 (Ex. 6)	\$ 19,929.58
+1995 - 1996 Occupancy Refund Due (Ex. 4)	\$ 18,724.10
<b>= Total Refund Due Multimedia</b>	<b>\$ 38,653.68</b>

## **EXHIBIT 6**

**Multimedia Cablevision, Inc.**

Union Station, 701 E. Douglas, P.O. Box 3027, Wichita, Kansas 67201 - (316) 262-4270

"Equal Opportunity Employer"

August 2, 1996

Ms. Mary Hann  
Service Representative  
Southwestern Bell Telephone  
5400 Foxridge  
Rm. 410  
Mission, KS 66202

Re: Letter dated July 3, 1996

Dear Ms. Hann,

Please be advised that Multimedia has a complaint pending at the Federal Communication Commission disputing Southwestern Bell's conduit rental rates and computation methodology. Therefore, the enclosed Multimedia Cablevision check #670212147, in the amount of \$28,884.75, is being submitted under protest.

This enclosed check covers the unpaid amount of the following invoices:

316 94B-5928,297	\$19,928.58
316 95B-2581,054	2,904.10
316 95B-2781,348	3,133.08
316 95B-1604,145	13.90
316 95B-5255,226	2,904.09

Total Amount: \$28,884.75

Thank you for your consideration in this matter.

Sincerely,

Ronald L. Marnell  
Vice President  
KS Regional Manager

cc: Michael C. Cavell  
Attorney, SWB



## Multimedia Cablevision, Inc.

COMPANY CHARGED	OUR ACCT. NO.	VENDOR REFERENCE NO.	GROSS	DEDUCTION	NET
206	4100	Disputed balance w/ Southwestern Bell on conduit			\$28884.75

Detach and retain this statement

VENDOR NO.

The attached check is in payment of items described above.  
If not correct please notify us promptly. No receipt desired.



Multimedia Cablevision, Inc.

P.O. Box 3027  
Wichita, Kansas 67201  
(316) 262-4270

BANK

Wichita, KS 67201

August 2, 1996

No. 670212147

40-4/1011

AMOUNT

\$28,884.75

PAY: \*\*\*Twenty-eight thousand eight hundred eighty-four dollars and 75/100\*\*\*\*  
Cash immediately  
Void 6 months from  
date on check.

TO  
THE  
ORDER OF: Southwestern Bell Telephone

*Richard C. Brown*  
*Patricia J. Kelly*

⑈670212147⑈ ⑆101100045⑆ 014001621807⑈

## **EXHIBIT 7**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

MULTIMEDIA CABLEVISION, INC.

*Complainant,*

v.

SOUTHWESTERN BELL TELEPHONE  
COMPANY

*Respondent.*

P.A. No. 95-008

C.S. Docket No. 96-181

To: The Cable Services Bureau

**PETITION FOR CLARIFICATION**

Multimedia Cablevision, Inc. ("Multimedia") respectfully submits this Petition for Clarification of the Commission's Hearing Designation Order in the captioned action. *Multimedia Cablevision, Inc. v. Southwestern Bell Telephone Company*, PA No. 95-008; CS Docket No. 96-181 (Released Sept. 3, 1996) ("HDO").

1. With respect to refunds, at footnote 78 of the HDO, the Commission stated that "nothing in this *Order* should be interpreted as our holding that SWB was entitled to retroactively bill for the period before October 27, 1994." HDO ¶ 37, n. 78.

2. Based on the Commission's pronouncement in note 78, and as part of post-HDO efforts to settle this matter informally, Multimedia has requested that Respondent Southwestern Bell Telephone Company ("SWBT") refund to it the amount of \$19,929.38 that Multimedia paid to SWBT under protest for conduit rent overcharges. Multimedia paid such

amount on August 2, 1996 during the pendency of this proceeding and under pressure from SWBT. *See* Exhibit 1. SWBT has refused to refund such amounts.

3. The record is clear in this proceeding that SWBT issued the bill for retroactive occupancy in retaliation for Multimedia's installation of fiber optic and non-video communications facilities. *See, e.g.*, Complaint ¶¶ 18-19; Exhibit 2 to Complaint. The record is similarly clear that SWBT overbilled Multimedia by charging it according to the number of cables installed in a single duct, rather than according to the amount of actual Multimedia duct occupancy, *id.*, a result that the HDO forbids. HDO ¶ 22.

4. The import of note 78 is that SWBT was not entitled to bill Multimedia retroactively for this amount, and, therefore, is not entitled to retain the amounts that Multimedia paid to SWBT under protest, and as a result of SWBT pressure. Accordingly, Multimedia is entitled to a full refund from SWBT in the amount of \$19,929.38.

## CONCLUSION

For the foregoing reasons Multimedia respectfully requests the Commission to clarify the HDO in this proceeding in the manner set forth in this Petition, and direct SWBT to refund to Multimedia the amount of \$19,929.38 paid during the pendency of this action under demand by SWBT which was contrary to the principles of this case.

Respectfully submitted,

**MULTIMEDIA CABLEVISION, INC.**

By



Paul Glist

J. D. Thomas

**COLE, RAYWID & BRAVERMAN, L.L.P.**

1919 Pennsylvania Avenue, NW

Suite 200

Washington, DC 20006

(202) 659-9750

October 3, 1996

Its Attorneys

## **EXHIBIT 1**



# Multimedia Cablevision, Inc.

Union Station, 701 E. Douglas, P.O. Box 3027, Wichita, Kansas 67201 - (316) 262-4270

"Equal Opportunity Employer"

August 2, 1996

Ms. Mary Hann  
Service Representative  
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Re: Letter dated July 3, 1996

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Total Amount: \$28,884.75

Thank you for your consideration in this matter.

Sincerely,

Ronald L. Marnell  
Vice President  
KS Regional Manager

cc: Michael C. Cavell  
Attorney, SWB

COMPANY CHARGED	OUR ACCT. NO.	VENDOR REFERENCE NO.	GROSS	DEDUCTION	NET
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VENDOR NO.

*Detach and retain this statement*

The attached check is in payment of items described above.  
If not correct please notify us promptly. No receipt desired.



**Multimedia Cablevision, Inc.**  
P.O. Box 3027  
Wichita, Kansas 67201  
(316) 262-4270

**BANK**

Wichita, KS 67201

August 2, 1996

No. 670212147

40-4/1011

AMOUNT

\$28,884.75

PAY: \*\*\*Twenty-eight thousand eight hundred eighty-four dollars and 75/100\*\*\*

Cash Immediately  
Void 6 months from  
date on check.

TO  
THE  
ORDER  
OF:

Southwestern Bell Telephone

*Richard C. Brown*  
*Patricia J. Kelly*

⑈670212147⑈ ⑆101100045⑆ 014001621807⑈



**CERTIFICATE OF SERVICE**

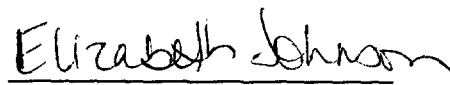
I, Elizabeth Johnson, a secretary in the law firm of Cole, Raywid & Braverman, L.L.P., hereby certify that a copy of the foregoing was mailed by first-class mail, postage prepaid, this 3rd day of October 1996, to the following:

\*Michael McMenamin  
Federal Communications Commission  
2033 M Street, NW - Room 801-B  
Washington, DC 20554

\*Elizabeth Beaty  
Federal Communications Commission  
2033 M Street, NW - Room 904-A  
Washington, DC 20554

Kansas Corporation Commission  
ATTN: Utilities Division  
1500 S.W. Arrowhead Road  
Topeka, KS 66604

Robert M. Lynch  
Richard C. Hartgrove  
Jonathan W. Royston  
Southwestern Bell Telephone Company  
One Bell Center, Suite 3526  
St. Louis, MO 63101

  
Elizabeth Johnson

\* Via Hand Delivery

## **DECLARATION OF SCOTT PETRE**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

MULTIMEDIA CABLEVISION, INC.

*Complainant,*

v.

SOUTHWESTERN BELL TELEPHONE  
COMPANY

*Respondent.*

P.A. No. 95-008

C.S. Docket No. 96-181

To: The Commission

**DECLARATION OF SCOTT PETRE**

I, Scott Petre, declare under the penalty of perjury of the laws of the United States of America, that the attached Declaration is true and correct.



Scott Petre

October 2, 1996

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

MULTIMEDIA CABLEVISION, INC.

*Complainant,*

v.

SOUTHWESTERN BELL TELEPHONE  
COMPANY

*Respondent.*

P.A. No. 95-008

C.S. Docket No. 96-181

To: The Commission

**DECLARATION OF SCOTT PETRE**

I, Scott Petre, do hereby state:

1. I am Construction Project Manager for Multimedia Cablevision, Inc. ("Multimedia") in Wichita, Kansas. In that capacity I am directly responsible for the placement and maintenance of Multimedia's facilities located in Southwestern Bell Telephone Company ("SWBT") conduit runs in downtown Wichita.

2. I prepared, or caused to be prepared, Exhibits 2-5 attached to the accompanying Factual Statement of Multimedia.

3. With respect to Exhibit 2, the spreadsheets demonstrating Multimedia occupancy of SWBT Wichita conduit for the years of 1995 and 1996, I prepared this exhibit using Multimedia underground plant records, based on actual SWBT conduit application materials

supplied to Multimedia by SWBT.

4. This spreadsheet, moving across the columns from left to right, identifies the Multimedia permit application number; the SWBT manhole numbers; the street locations; the length of the cable in each conduit run, from manhole center-to-manhole center; the numbers and types of conductors in ducts in the conduit run; the number of ducts in the conduit run with Multimedia facilities; the amount of space the Multimedia facilities occupy in each duct (expressed as the duct occupancy factor); the actual chargeable feet of duct occupancy (derived by multiplying the length of the run by the total duct occupancy factor); as well as information concerning the application and any modification dates, and comments concerning the facilities.

5. Multimedia's Wichita facilities are located typically in four-inch duct (although there may be some cases where they are in three-inch duct). With the use of innerduct, it is possible to fit eight (or perhaps more) cables within a single four-inch duct. Therefore, where there is only one cable (either fiber or coaxial) located in a duct, additional facilities may be installed in the duct, requiring application of the half-duct convention. Where either two coaxial or two fiber optic cables are placed in a single duct, and innerduct is used within that duct, additional facilities may be added to the duct, requiring application of the half-duct convention. If Multimedia has one cable in one duct in a 100-foot conduit run, the half-duct convention requires the application of the half-duct rate ( $100 \times 1/2$  duct rate). Similarly, if Multimedia has two cables in a single duct in inner duct in the same 100-foot run, it likewise occupies one-half a duct and should be charged the half-duct rate ( $100 \times 1/2$  duct rate). If Multimedia has one cable in one duct and one cable in an adjacent duct (2 ducts with Multimedia

Cable) in the same 100-foot conduit run, the half-duct rate would be applied to each duct to produce the proper rate  $[(100 \times 1/2 \text{ duct rate} + (100 \times 1/2 \text{ duct rate})]$ .

6. Because of the variations in numbers of cables placed in duct, and usage of inner duct, and other factors, the most accurate way to apply the half-duct methodology is on a run-by-run basis. If our hypothetical 100-foot run appeared in Exhibit 2, and it contained only one cable in a single duct in the conduit run, "100" would appear in the column labeled "DUCT FT C TO C" (which means the distance of the conduit run from manhole center-to-manhole center). Because the half-duct convention applies this duct "0.5" would be entered into the column labeled "OCCUP FACTOR BY DUCT" column. Because only one duct has a Multimedia cable, the total occupancy factor is 0.5. The 0.5 total occupancy factor is multiplied by 100 ft. to produce an effective chargeable occupancy of 50 feet which then would be multiplied by the "full-duct" rate.

7. Examples from Exhibit 2 will illustrate application of the Commission's half-duct convention.

8. Application 57 (manholes 128-129 under St. Francis and Douglas) shows a conduit run of 381 feet. Multimedia has one coaxial cable lying in one duct. Because there is sufficient capacity in the duct to pull additional cables, and there are no Multimedia facilities in any other SWBT duct in the run, Multimedia is occupying only one-half a duct, making the charge factor for that duct 0.5. Therefore, Multimedia should be billed for only 191  $(381 \times .5)$  feet of occupancy.

9. Application 17 (manholes 114-114A under 1st Street between Market and

Main) shows a conduit run of 34 feet. Multimedia has two fiber cables in innerduct in one duct, and three coaxial cables in another duct. Because there is sufficient capacity in the first duct in which fiber is installed in innerduct to pull additional cables, Multimedia is occupying only one-half of that duct, making the charge factor for that duct 0.5. However, it also has three coaxial cables in an adjacent duct, making it difficult to install additional facilities in that duct, and requiring a charge factor of 1.0 for such duct. Therefore, the total charge factor for this conduit run is 1.5 and Multimedia should be billed for 51 (34 x 1.5) feet of occupancy.

10. Employing the half-duct convention to each conduit run has reduced the effective chargeable feet of conduit occupancy from 15,082 to 10,847 as of June 1995 and from 15,440 to 11,026 as of both December 1995 and June 1996. The "full-duct" then is applied to those reduced effective chargeable feet figures.

11. As set forth in Exhibit 1, the annual half-duct rate for 1995 is \$.20 and for 1996 is \$.19. The annual "full-duct" rates for those years, therefore, are \$.40 and \$.38, respectively. The semi-annual rates (the billing cycle that SWBT applies to Multimedia in Kansas), for the full-duct occupancy, therefore, are \$.20 and \$.19, respectively.

12. This semi-annual rate, and adjustments to SWBT billings for the years 1995 and 1996, are set forth in Exhibit 4. The total refunds due Multimedia from SWBT are set forth at Exhibit 5.

13. Multimedia has paid all SWBT conduit occupancy invoices, including \$19,929.58 in backbilling charges which SWBT issued initially to Multimedia in October 1994.

14. Multimedia never has been accorded any right to occupy or use SWBT

maintenance duct, and enjoys no benefits related to that duct.

15. The information set forth in the foregoing Statement of Facts and exhibits thereto are true and correct to the best of my knowledge, information and belief.

I declare under the penalty of perjury of the laws of the United States of America, that this Declaration, is true and correct.

October 2, 1996



**CERTIFICATE OF SERVICE**

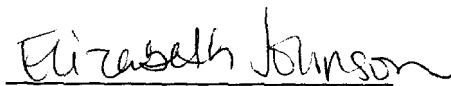
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Federal Communications Commission  
2033 M Street, NW - Room 801-B  
Washington, DC 20554

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2033 M Street, NW - Room 904-A  
Washington, DC 20554

Kansas Corporation Commission  
ATTN: Utilities Division  
1500 S.W. Arrowhead Road  
Topeka, KS 66604

Robert M. Lynch  
Richard C. Hartgrove  
Jonathan W. Royston  
Southwestern Bell Telephone Company  
One Bell Center, Suite 3526  
St. Louis, MO 63101

  
Elizabeth Johnson

\* Via Hand Delivery